IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15081 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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ARJUNBHAI DAMJIBHAI PARMAR - Petitioner
Versus
JAYANTIBHAI KANTILAL VALAND (DELETED) & 3 – Respondents

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Appearance :
MR AR MAJMUDAR for Petitioner(s) : 1,
DELETED for Respondent(s) : 1 - 2.
MS TEJAL VASHI, FOR MR VH DESAI for Respondent Nos.: 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 06/12/2006

ORAL JUDGMENT

1. By filing this petition, under Article 227 of the Constitution of India, the petitioner has prayed to quash and set aside the order passed by the learned Civil Judge (Senior Division), Baroda below application – Exhibit–48A in Regular Civil Suit No.1867 of 1988 on 10/09/1998 rejecting the application filed by the petitioner- plaintiff for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908.

2. It is averred by the petitioner that the petitioner – original plaintiff had filed Regular Civil Suit No. 1867 of 1988 for permanent injunction and declaration in respect of the suit property on the basis of agreement dated 17/07/1987 and pursuant to the said document, the petitioner was put into possession of the suit premises. The petitioner moved

application – Exhibit 48A in the said suit for amendment of the plaint seeking relief of specific performance of agreement dated 11/07/1987. The respondents/defendants resisted the said application and the learned Trial Judge, after hearing the learned Advocates for the parties, rejected the said application for amendment, and hence, this petition.

3. I have heard Mr.A.R.Majmudar, learned Advocate for the petitioner and Ms. Tejal Vashi, learned Advocate for Mr. V.H.Desai, learned Advocate for the respondent Nos. 3 and 4. Respondent Nos.1 and 2 are deleted.

4. The learned Advocate for the petitioner has mainly relied on decisions (1) ***Ragu Thilak D. John v/s. Rayappan and Ors.*** Reported in ***AIR 2001 SC 699*** and (2) ***Pankaja & Anr. V/s. Yellapa*** reported in ***JT 2004 (6) SC 259.***

5. Ms. Tejal Vashi, learned Advocate for respondent Nos. 3 and 4, has submitted that the relief claimed for amendment of the plaint is barred

by limitation and, therefore, the learned Trial Judge was justified in rejecting the application, and has not committed any jurisdictional error in the order impugned, and therefore, the petition requires to be dismissed.

6. It appears from the impugned order that the petitioner had filed suit on the basis of agreement dated 11/07/1987 executed in respect of the suit property and the suit has been filed for declaration and injunction. During the pendency of the suit, according to the petitioner, the possession of suit property was handed over by defendant Nos. 1-2 to defendant Nos.3-4. and, therefore, the petitioner – plaintiff made an application for amendment of the plaint seeking relief of specific performance of the agreement dated 11/07/1987. The only objection to the amendment is that of limitation.

7. In the decision of ***Ragu Thilak D. John v/s. Rayappan and Ors.*** (*supra*), the Apex Court while allowing the amendment of the pleading under Order VI Rule 17 of Code of Civil Procedure, held that when

there is plea that relief sought through amendment is barred by limitation, the issue about the limitation can be raised after allowing the amendment. In view of this settled proposition in the present case, the petitioner–plaintiff sought amendment to incorporate relief of specific performance of the agreement. The respondents can raise the plea about the limitation before the Trial Court after the amendment of the plaint. The purpose and object of Order VI Rule 17 of Code of Civil Procedure is to allow either party to proceed to alter or amend his pleadings and such power can be exercised at any stage of the proceedings in the interest of justice. The Courts while deciding such prayers should not adopt hyper technical approach more particularly, where the other side can be compensated by payment of costs. Therefore, in my view, the learned Trial Judge committed error in not exercising the jurisdiction vested in him.

8. In the decision of ***Pankaja & Anr. V/s. Yellapa*** (*supra*), the Supreme Court has again held that the amendment of the pleading should not be

disallowed merely because it is opposed on the ground that the same is barred by limitation. In view of the above settled proposition, the present petition is required to be allowed.

9. In view of the above, the petition is allowed. The impugned order dated 10/09/1998 passed below application Exhibit 48A in Regular Civil Suit No. 1867 of 1988 on 10/09/1998 is hereby set aside. The petitioner is permitted to amend the plaint as prayed for. The petitioner shall carry out the amendment within a period of one month from today, and on carrying out the amendment of the plaint, the respondents are permitted to file written statement, if any, to the amended plaint. In the facts and circumstances of the case, there shall be no order as to costs. Rule is made absolute accordingly.

[BANKIM.N.MEHTA, J.]

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